Supreme Court, U.S.
FILED

No. 961087 DEC 30 1996

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In the Supreme Court of the United States

OCTOBER TERM, 1996

G. DASTGIR QURESHI; MARY A. QURESHI

Petitioners,

vs.

COMMISSIONER OF THE INTERNAL REVENUE SERVICE

Respondent.

PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Warren Nemiroff
Counsel of Record
2029 Century Park East, #600
Los Angeles, California 90067
(310) 552-3152

10 pp

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Fourth Circuit has discretion to allow the filing of an appeal from a United States District Court if arguendo the filing was 24 hours late of a statutory date?

2. Did the United States Court of Appeals for the Fourth Circuit abuse its discretion by dismissing the below heard case on the grounds the notice of appeal was filed 24 hours beyond the statutory date?

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

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I. Where a petitioner files an appeal from the United States District Court in the United States Court of Appeals for the Fourth Circuit the appellate court has discretion to hear an appeal which in arguendo the filing was 24 hours late of a statutory date . . . . . .

II. Where the United States Court of Appeals for the Fourth Circuit dismisses a case heard below on the grounds the notice of appeal was filed 24 hours late of a statutory date . . . . . .

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Cases Cited:

26 U.S.C.A. (I.R.C. 1939)
section 272(a)(1) 1, 2, 3, 4

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APPENDIX

Appendix A 1a

PETITION FOR WRIT OF CERTIORARI

Petitioners, G. Dastgir Qureshi; Mary A. Qureshi, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

Opinion below is not reported yet because it is a judgment.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on October 2, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

STATUTORY INVOLVED

The pertinent provisions of 26 U.S.C.A. (I.R.C. 1939) section 272(a)(1) is set forth below:

> The requirement that petition for redetermination of income tax deficiency found by Commissioner of Internal Revenue be filed within 90 days after mailing of deficiency notice is jurisdictional.

STATEMENT OF THE CASE

The decision being appealed was entered in the United States Tax Court April 24, 1996. Due to financial restraints the petitioners did not decide

to file a notice of appeal until July 23, 1996. Notice was filed by petitioner's attorney the next morning on July 24, 1996. The government filed a motion to dismiss based on statutory regulation 26 U.S.C.A. (I.R.C.) section 272(a)(1) which requires that petition for redetermination of income tax deficiency found by Commissioner of Internal Revenue be filed within 90 days after mailing of deficiency notice. The United States Court of Appeals for the Fourth Circuit dismissed the above statute.

REASONS FOR GRANTING THE WRIT

Appealing a lawsuit to the United States Court of Appeals for the Fourth Circuit is a very expensive process for the average person. One must pay court cost and attorney fees. There is also the risk of being required to pay the attorney fees for the other side if the appeal is unsuccessful. In the case at bar, the Petitioners have a tax deficiency of approximately $20,000 assessed against them. Although $20,000 is a substantial amount of money to the petitioners, this amount of money must be reconciled with reference to the cost of bringing the appeal. The legal cost of bringing the appeal was the primary reason that the Petitioner took almost 90 days to decide whether or not to appeal.

Filing the appeal 24 hours late does no harm to Respondent. The respondent still has the opportunity to use all of its legal theories and allegations it originally used against Petitioner. Respondent has not been prejudiced in any way.

The United States Court of Appeals for the Fourth Circuit does not have to dismiss the case. The circuit court abused its discretion by dismissing without first considering the merits of the case at bar. 26 U.S.C.A. (I.R.C. 1939) section 272(a)(1) was not written to confine the courts legal reasoning, it was written to guide the courts in their pursuit of justice. Appellate courts must be free to consider the merits of a case before the case is arbitrarily dismissed. The circuit court has a duty to at least listen to petitioners' complaint. The arbitrary dismissal seen here is an abuse of discretion and an affront to individuals seeking justice.

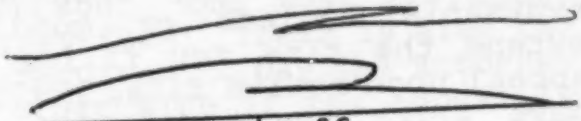
Furthermore, under F.R.A.P. Rule 4, the district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon notion filed not later than 30 days after the expiration of the time prescribed. Based on this rule, courts clearly have discretion to allow petitioner additional time to appeal.

The decision to dismiss made by the United States Court of Appeal for the Fourth Circuit is grossly unfair to the petitioners. The Petitioners have no legal expertise. They had no way of knowing that notifying their attorney on day 89, of a 90 day limitation, would be inadequate time frame to file an appeal. It is unjust to punish individuals simply because they are unsophisticated in the intricacies of the legal profession.

CONCLUSION

The Petitioners were merely 24 hours late in bringing their appeal. The 24 hour delay was caused due to economic consideration of the expense in bringing an appeal and due to the lack of legal sophistication by petitioners regarding the last minute notification of their attorney. The United States Court of Appeals for the Fourth Circuit abused its discretion by dismissing the appeal without a hearing. Justice requires that the court must assert its discretion and interpret 26 U.S.C.A. (I.R.C. 1939) section 272(a)(1) in a manner which is fair and equitable to the petitioner.

Respectfully submitted,



Warren Nemiroff
Counsel of Record

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
October 2, 1996

No. 96-2015
93-18099

G. DASTGIR QURESHI; MARY A. QURESHI

Petitioners - Appellants

v.

COMMISSIONER OF THE INTERNAL REVENUE SERVICE

Respondent - Appellee

ORDER

Appellee has filed a motion to dismiss appeal and memorandum in support. The appellants have filed a memorandum in opposition to this motion.

The Court grants the motion to dismiss entered at the direction of Judge Michael with the concurrences of Judge Hall and Judge Niemeyer.

FOR THE COURT

/s/ Patricia S. Connor